Award No. 6912
Docket No. CL-7022

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

INDIANA HARBOR BELT RAILROAD COMPANY THE CHICAGO RIVER & INDIANA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that

(1) While in conference with the Employes' Committee, the Carrier refused to restore the past practice of allowing half-day holidays on Lincoln's Birthday, Columbus Day, Election Day and Armistice Day to the employes in the Superintendent of Freight Transportation's office at Gibson, Indiana and Chicago, Illinois, which practice of allowing such half-day holidays had been in existence more than twenty-five (25) years, with the exception of a temporary suspension for several years subsequent to 1942 due to national defense efforts, and

(2) That the Carrier shall be required to now restore the established practice of allowing employes affected half-day holidays on Lincoln's Birthday, Columbus Day, Election Day and Armistice Day without deduction in pay. and reimburse employes affected the difference between straight time and time and one-half for February 12, 1953 and for any subsequent half-day holidays such as Lincoln's Birthday, Columbus Day, Election Day and Armistice Day they were instructed to work.

EMPLOYES' STATEMENT OF FACTS: For many years prior to 1942, the employes in the office of the Superintendent of Freight Transportation. and in some of the other offices on the Indiana Harbor Belt Railroad, had enjoyed half-day holidays on Lincoln's Birthday, Columbus Day, Election Day and Armistice Day. Due to lack of uniformity in applying this practice. Mr. T. W. Evans, Vice President of the New York Central Railroad, addressed a letter to all officials of the Indiana Harbor Belt and Chicago River and Indiana Railroads calling attention to the varying practices that had prevailed in connection with allowing employes the above mentioned half-day holidays, advising that in the interest of uniformity, Mr. Willamson, President of the New York Central Railroad, had suggested that unless the requirements of the work to be performed justified working the entire day it was desired to have

3. No provision of the Agreement grants time off as requested by the employes.

All evidence and arguments presented herein have been made known to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The historical background of this dispute is as follows: The first agreement between the parties became effective in 1936 and prior to that time there existed a practice whereby employes not needed for essential service were given half-holidays on Lincoln's Birthday, Columbus Day, Election Day and Armistice Day. In 1942 this practice was discontinued by reason of the national defense effort in World War II. After this emergency was over the employes requested a restoration of the practice and over a period of several years the record shows correspondence relative to such restoration of the practice. This claim is the result of the Carrier's failure to reinstate the practice and also requests a difference in pay between straight time and time and one-half for those employes instructed to work on these half-holidays.

Petitioners contend in brief that this long established practice has become a right to employes at the Freight Transportation office at Gibson, Indiana and Chicago, Illinois and therefore should be restored and to support this contention have cited awards of this Division and correspondence between representatives of the parties. Respondent Carrier states that this practice is in its nature a gratuity and is not based on any contract rule, therefore, being optional it can be discontinued at will. Also that the Agreement contains a holiday rule and these half-holidays are not set out therein.

For the purpose of this opinion we will consider Election Day as being in a different category or as having a different status than the other three days under consideration. This, by reason of the fact, that the several States of the Union set up their respective election machinery by statutory enactment, governing the opening and closing of polling places, qualifications for voting, etc., and in many states, by such statutory enactments, have made specific provision in the matter of allowance of time off to employes to vote. Therefore, we construe this part of the claim as being controlled by such statutory provisions.

In the matter of the other three holidays in question we are of the opinion that a clear line of demarcation exists in construing questions on which the parties have placed their own interpretation on the intent of the rule in actual practice on the property and those practices which are not based or bottomed on rules of the Agreement. In the first instance the meaning and intent of the rule is a matter of interpretation where ambiguity exists; in the second instance we view that such practices are optional and may be discontinued at will as otherwise we would be writing a rule for the parties which act is not within our province. We are of the opinion that such must be the ruling in view of the fact that we are dealing with contract law and must confine ourselves to interpretations of the rule in question. Likewise, this construction of rules of the Agreement is followed in Awards cited, however, with some exceptions, notably Award 5082, which goes outside of the principle of rules construction enunciated and apparently bases the finding in part on a verbal or parol understanding and through long practice has assumed the stature of being considered a supplemental agreement. However, if it is assumed that such a situation does exist it could not survive the revision of the Agreement unless it was incorporated therein. This Agreement has a holiday rule and there have been revisions of the same subsequent to the installation of the practice under consideration. Therefore, in order that such practice become binding on Carrier, or be construed to have assumed contract status, it would have to be reduced to writing in the subsequent revisions of the agreement. As this was not done we would consider in giving favorable

status to this claim that we would be writing a rule for the parties, and as stated, this is not within our power, hence the claims fail for the reasons stated.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claims denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago Illinois this 4th day of March, 1955.